The New Zealand Psychological Society

Te Rōpū Mātai Hinengaro o Aotearoa

Submission on behalf of the New Zealand Psychological Society on the Review of Family Violence Law

18 September, 2015

INTRODUCTION

Our submission is in two parts –

- PART ONE - Information about the NZPsS
- PART TWO – Our responses to the questions in the discussion document.

We commend the Ministry of Justice for producing the discussion document *Strengthening New Zealand's legislative response to family violence.* We also welcome Justice Minister Amy Adams' statement that combating family violence is her top priority in the Justice portfolio. We are pleased with the Minister's other announcements in relation to Law Commission references about a standalone offence of non-fatal strangulation, and the treatment of domestic violence victims who commit homicide.

We wish to emphasise strongly our view that the Domestic Violence Act is excellent legislation. The key problem is that is has never been enforced properly. No government has provided sufficient resources for proper enforcement and there has never been adequate training of judges, police, lawyers and others who work in cases involving domestic violence in the criminal justice system. New Zealand lags woefully far behind internationally in providing virtually no training and resources to those in the criminal justice system who deal with domestic violence. For example, we refer you to the American publication, *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide,* produced by the State Justice Institute and National Council of Juvenile and Family Court Judges.

PART ONE – The New Zealand Psychological Society

The New Zealand Psychological Society is the largest professional association for psychologists in New Zealand. It has over 1100 members who apply psychology in a wide range of practical and academic contexts to health, education, young people's services, organisations and corrections. Our collective aim is to improve individual and community wellbeing by disseminating and advancing the rigorous practice of psychology.

This submission has been prepared with the help of the Coalition for the Safety of Women and Children. We would like to thank them for their help with this submission. Details of the Coalition are below:

Members:
- Auckland Sexual Abuse HELP
- Auckland Women's Centre
- Eastern Women's Refuge
- Homeworks Trust
- Inner City Women's Group
- Mental Health Foundation
- Mt Albert Psychological Services Ltd
- North Shore Women's Centre
- Rape Prevention Education – Whakatu Mauri
- Rodney Women's Centre
- SHINE Safer Homes in NZ Everyday
- Supportline Women's Refuge
- Te Rito Rodney
- Women's Health Action Trust

Networking
Tu Wahine, which provides services for Maori, and The Pacifica Island Prevention and Safety Project work in parallel with the Coalition. The Coalition also links in with the National NGO Alliance, a collective of national agencies including the National Network of Stopping Violence Services and the National Network of Independent Women's Refuges.

PART TWO: OUR RESPONSES TO QUESTIONS IN THE DISCUSSION DOCUMENT

The following are our responses to the questions set out in the discussion document.

1 Legislative framework: overview
What changes to legal tools and powers would ensure the law keeps pace with advances in understanding of family violence and how to address it?

There is a need to consider the overlap between sexual violence, domestic violence and child abuse. The overlaps have been put at 30-60%. The NZ legislation for the protection from these forms of violence is in four forms: The Crimes Act 1961, The Domestic Violence Act 1995 and the Children Young Person's and their Families' Act 1989 and the Care of the Children's Act 2004. There needs to be work on legislation to address the overlaps to ensure protection.

Advances in the way in which domestic violence is dealt with in other jurisdictions should be kept under permanent and ongoing review. Effective tools and powers developed overseas should be introduced in New Zealand as speedily as possible.

Ongoing monitoring and review should also take place in New Zealand of the way in which current legal tools and powers operate, so that gaps and shortcomings can be picked up rapidly and remedied. This will only be possible if adequate resources are provided for monitoring and review work and for researching and introducing changes.

We do not at present see evidence of a willingness to provide sufficient resources for this work.

2 The nature and dynamics of family violence across population groups
What changes could be made to address the barriers faced by each population group?
Does the current legal framework for family violence address the needs of vulnerable population groups, in particular disabled and elderly people? How could it be improved to better meet the needs of these groups?
What changes could be made to better support victims who are migrants, particularly when immigration status is a factor?
What other ideas do you suggest?

Section 4 of the Domestic Violence Act defines a "domestic relationship" as being between partners, family members, people who share households, or those having close personal relationships. Sections 4(2) and (3) provide that people are not regarded as sharing households or having close personal relationships by reason only of the fact they have a landlord-tenant relationship; or a work relationship and occupy a common dwellinghouse.

For older and disabled people, the relationships that the concept of domestic violence can include are much wider than for younger and/or able-bodied people, as disabled and older people are often reliant on a range of people to support them and, in some case, to perform very intimate functions. This can be family, friends and partners, but also includes paid or unpaid carers and support people, and those who provide medical, welfare, transport and other services. As a result of the way violence services have been developed and funded, older and disabled people are often excluded from the mainstream responses of violence services. Older people are referred to Age Concern, as if violence suddenly becomes something else when a person is older, and the abuse of disabled people – if identified and responded to at all – is addressed through the health system, which treats violence as a medical/behavioural issue rather than as a crime. Neither of these systems is resourced to address violence as a crime, to engage with the legislative process and to provide safety and rehabilitative responses to victims.

Similarly, older and disabled people are frequently not considered credible witnesses to their own abuse. Accordingly, their cases – even if referred to the police – virtually never get to court. As a

consequence of cuts to domestic and sexual violence sector funding and changes in government policy in recent years, many violence services do not have the resources, capacity, skills or mandate to work with older and disabled women. Indeed, many services are funded to work only with women who have children in their care. Adequate resources need to be provided so that services can support older and disabled women properly.

Migrant women are particularly vulnerable to, and unable to escape from, domestic violence. Many migrant women who live with abusive men have never had the opportunity to become residents. This enables violent men to control the women by threatening to dob them in to Immigration New Zealand or to the Ministry of Social Development. Research needs to be done into the situation of these women and policies and resources need to be developed to assist them. Domestic violence should be a factor which Immigration New Zealand staff screen for. Where it is present, women should be given permanent residence in New Zealand and immediate access to benefits, housing and other support so they and their children can escape permanently from violence. It is also essential that migrant women have access to interpreters and that interpreters are screened before working on domestic violence cases to ensure they are not upholding the perpetrator's viewpoint to the women, and are not intimidating them into remaining in the violent situation.

A disclosure of abuse against a disabled person is even less likely to proceed to prosecution as it is a strongly held opinion of many police and judges that disabled people will not make credible witnesses in court. This lack of credibility extends to people who communicate in alternative ways and feeds into police and others fears and lack of understanding about disabled people and perceptions of disabled people being childlike and unable to credibly represent their circumstances and what they have experienced and observed.

New Zealand research has identified that for women who experience mental illness or substance abuse problems either concurrently with, or as a result of, domestic or family violence and abuse, stereotyping and discrimination can result in not only being perceived as not credible when attempting to get help, but being identified as the problem and blamed for the abuse.
As Crenshaw (1991) noted it is "impossible to deny that society views the victimisation of some women as less important than others" (p1471)

Bogard in Sokoloff (2005) examines constructions of real victims and how the intersection of race, class, sexual orientation and gendered notions of violence influence who is seen as a real or appropriate victim and how this validation of real victims "implicitly denies the victimisation of others (p 30)". She identifies courts, police and others having less empathy for prostitutes, HIV positive women, drug users and those who fight back, for example, and that for these groups, who are not deemed legitimate victims, protection and services may be scarce or non-existent.

Judges, lawyers, police and other professionals that work with domestic violence survivors should be required to have in-depth training on the particular risks and needs of different population groups.

Safety for women and children or those affected by domestic violence is an imperative across cultures and cultural practices or experiences should never be used as an excuse for violence, coercive control or sexual abuse towards women and children.

Consideration should be given to introducing legislation to ban dowry practices, which require the giving of material goods or money in exchange for marrying a woman. Demands for dowry sometimes continue after the marriage ceremony and can be crippling for the bride's family. They are a form of financial abuse.

Consideration should be given to providing harsher penalties for violence toward pregnant women, which can have dreadful repercussions for the foetus or unborn child and the health of the pregnant woman[1].

3 Definition of "family violence"

What changes to the current definition of "domestic violence" would ensure it supports understanding of family violence and improves responses? For example:

- *More clearly explain the concept of "coercive control"*
- *Use the term "family violence" instead of "domestic violence"*
- *Include the abuse of a family pet, where the abuse of threat of abuse is intended to intimidate or harass a family member.*

What other ideas do you suggest?

We support the specific inclusion of the concept of "coercive control" in the Domestic Violence Act. In our experience, judges and others working in the field of domestic violence are unclear about what is meant by "psychological abuse" in the context of domestic violence. United Kingdom Home Secretary Theresa May in November 2014 announced a new domestic abuse offence of "coercive and controlling behaviour" within relationships. The provision aims to protect victims from extreme psychological and emotional abuse. The definition is as follows -

Definition of Domestic Violence

(1) For the purposes of this Act, "Domestic Violence" means-

(a) Controlling, coercive or threatening behaviour,

(b) Physical violence, or

(c) Abuse, including but not limited to, psychological, physical, sexual, financial or emotional abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality.

(2) For the purposes of the definition in subsection (1)-

"coercive controlling behaviour" shall mean a course of conduct, knowingly undertaken, making a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

"coercive or threatening behaviour" means a course of conduct that knowingly causes the victim or their child or children to-

(a) fear that physical violence will be used against them,

(b) experience serious alarm or distress which has a substantial adverse effect on the victim's day-to-day activities.

(3) For the purposes of subsection (2) a person shall be deemed to have undertaken a course of conduct knowingly if a reasonable person in possession of the same information would conclude that the individual ought to have known that their course of conduct would have the effect in subsection 2 (a) or (b).

We support the inclusion of similar provisions in New Zealand's Domestic Violence Act. Specifically, we advocate that the definition of "coercive control" should incorporate explanations of surveillance and monitoring, which are commonly used by abusers when in the relationship and when separated.

[1] Brownridge, D. A., Taillieu, T. L., Tyler, K. A., Tiwari, A., Chan, K. L., & Santaos, S. C. (2011). Pregnancy and intimate partner violence: Risk factors, severity and health effects. *Violence Against Women, 17*(7), 858-881.
Coker, A. L., Sanderson, M., & Dong, B. (2004). Partner violence during pregnancy and risk of adverse pregnancy outcomes. *Paediatric and Perinatal Epidemiology, 18*, 260-269.
Fanslow, J., Silva, M., Whitehead, A., & Robinson, E. (2008). Pregnancy outcomes and intimate partner violence in New Zealand. *Australian and New Zealand Journal of Obstetrics and Gynaecology, 48*, 391-397.

a. Surveillance can involve constantly monitoring the victim/survivor in order to ensure that she is doing as she has been instructed to do. This can include insisting that she use the toilet with the door open, scrutinising and examining her day to day activities to ensure they meet the abuser's exacting standards, following her when she is out, and constant text-messages, phone calls and e-mails, which continue after separation and are very distressing and frightening for those receiving them.
b. The definition should also include coercive control behaviours which prevent the woman from talking to others or isolating the woman from contact with family or friends,
c. Micromanagement of the woman's everyday life, (e.g. when she gets up in the morning, how and when she goes to the toilet, how she does the housework, cooks or provides family meals etc.)
d. Baring her from leaving/escaping; or confinement,
e. Preventing her from obtaining the essentials of living (food, water, health needs and other essentials) including health care,
f. Preventing her from working or attending education courses, and
g. Reproductive control (e.g. preventing contraceptive use and enforcing abortions or preventing abortions),
h. Humiliation and degradation,
i. Forced use of drugs or alcohol,
j. Punishing the children in order to punish her. Children have been killed by fathers to punish the mother[2]. Two examples of this are the killings of the Tiffany, Holly and Claudia Bristol by their father; and the killings of Bradley and Ellen Livingstone by their father.
k. Threats to family pets should also be included within the definition, as should
l. Threats to the children or other family members. Threats to the children and physical or psychological punishment of the children for perceived transgressions of the mother are particularly distressing to women in this context.

We believe the lack of understanding of domestic violence as a pattern of coercive and violent behaviour is one of the most significant gaps in New Zealand's response to domestic violence. Almost invariably, judges, the police, lawyers and others treat each event of physical or psychological abuse as a separate and isolated matter. This results in the trivialisation of the perpetrator's behaviour, confirming to the perpetrator that he will face no legal sanctions for his conduct, and to the victim that the law will not protect her.

When tragedies such as the killings by Edward Livingstone of his two children and other homicides by partners or ex-partners are analysed in detail, the pattern of behaviour becomes clear. However, by that time it is too late to save women's and children's lives. This is why the work of the Family Violence Death Review Committee is so important in providing this analysis and making recommendations. We are disappointed that governments have failed to act on these recommendations.

We do not believe that the term "family violence" should be used instead of "domestic violence." The term "domestic violence" has been a long-standing term used predominantly to refer to men's violence against woman partners or ex-partners. The Domestic Violence Act has extended this definition to intimate partners of either gender.

By contrast, the term "family violence" has a long history originating from theoretical ideas about conflict in families. Strauss and Gelles' early work, for example, argued that family violence emerged

[2] Martin, J. and R. Pritchard (2010). Learning from tragedy: Homicide within families in New Zealand 2002-2006. Wellington, Centre for Research and Evaluation, Ministry of Social Development: 85.

out of escalating conflict in the family, where one hit and then the other hit, and the hitting escalated into full-blown and harmful violence. The "family violence" understanding of violence within families emerging out of increasing and escalating conflict between the adults, with both equal contributors to the violence, is not supported by evidence and, in practice, is extremely harmful. It is this analysis which leads judges, lawyers and others to apply the discredited and non-existent concept of "situational violence" to cases involving domestic violence, thereby jeopardising the safety of women and children[3]. The concepts of "family violence" and "situational violence" mirror the old approach of "It takes two to tango," which also regarded domestic violence as mutual violence by two partners. That is not the reality of domestic violence: the violence is overwhelmingly perpetrated by men against women and children and is commonly unpredictable.

One way to describe this violence is by use of the term "male intimate partner violence against women," however this term does not capture the violence women experience from ex-partners, which is a substantial part of the violence experienced by women. Separation is known to be the most dangerous time for women escaping from a partner when there has been domestic violence. The term men's domestic violence against women captures both partner and ex-partner violence.

We support including the abuse of family pets within the definition of "domestic violence." There is extensive research from overseas – particularly the United States – about the link between animal abuse and domestic violence. There is now also New Zealand research about this. The 2012 report *Pets as Pawns: The Co-existence of Animal Cruelty and Family Violence* was commissioned by the Royal New Zealand Society for the Prevention of Cruelty to Animals and the National Collective of Independent Women's Refuges. The report can be found at this link - https://womensrefuge.org.nz/users/Image/Downloads/PDFs/Pets%20as%20Pawns.pdf.
The research found that one in three of the women surveyed reported delaying leaving violent relationships because they feared their pets and other animals would be killed or tortured. Of these, one quarter said their children had witnessed violence against animals. The research underlines the strong link between animal cruelty and domestic violence in New Zealand. It also showed that 50 per cent of the women interviewed had witnessed animal cruelty as part of their experience of domestic violence.

The study involved direct interviews with 30 refuge clients who had witnessed or were forced to take part in animal cruelty as part of family violence, interviews with SPCA stakeholders; and surveying 203 Women's Refuge clients. Of these 203 women, 111 (55 per cent) stated that animal cruelty was part of their experience of domestic violence as, at some point, either a family member or their partner had threatened to kill one of their pets, animals and/or farm animals. One third of the respondents also reported actual injury of death of the animal.

As a result, deciding when and how to leave a relationship that included cruelty to animals became more complex. Twenty-eight percent of women reported they would have left their abusive relationship earlier if they had not had a pet or animal. The length of time they stayed ranged from one week to 22 years with an average of two years.

The research also uncovered information about how children witnessed animal cruelty. Of the 159 research participants with children, a quarter reported that their children had witnessed someone in their family injure or kill a pet or animal. Disturbingly, many of the women reported that partners who had warnings or convictions around physical violence, would deliberately threaten or hurt pets

[3] Gulliver, P. and J. Fanslow (2015). "The Johnson typologies of intimate partner violence: An investigation of their representation in a general population of New Zealand women." Journal of Child Custody **12**: 25-26.

as a way of controlling their family and make it easier to avoid reconviction. In this way, pets and other animals become part of an arsenal of tricks abusers use to instil fear and control over their family. Some men will threaten to kill family pets if the woman leaves, and in some cases women and children have witnessed extreme torture of pets or animals as part of domestic violence.

We support including killing, abuse and threats to pets within the definition of "domestic violence." We also submit that the names of family pets should be included on protection orders alongside the names of women and children. The SPCA runs a programme for intermediate school children called "One of the Family," which aims to teach empathy. We support the Government providing funding so that this programme can be taught in all schools in New Zealand and extended to children of different ages.

We support including financial abuse as a form of coercive control.

- Confinement or entrapment for the purposes of financial benefit should also be understood as financial abuse.
- Forcing her to take out a benefit when there is no entitlement.
- Forcing her to hand over any benefit or wage or salary to which she is entitled.

We support expanding on sexual abuse as follows

- In addition to rape and sexual assault mention should be made of:
- Post separation sexual abuse – post-separation rape is an indicator of potential lethality.
- Forcing her to engage in degrading sexual acts
- Using sexual humiliation to degrade her
- Using sexual humiliation such as sexual assault in front of children to degrade her
- Using instruments or objects to rape her
- Forcing her to watch pornography

Identifying and naming these sexual acts will alert the legal profession to the need to identify all forms of sexual violence.

Confinement and entrapment should be criminalized. Confinement involves keeping the women contained in the house or preventing her from leaving when she wants to[4]. Entrapment involves coercive control and/or blackmailing the women into staying by threatening her if she attempts to leave. Women are often criticized for not leaving, but abusive men often use these actions to prevent women from leaving[5].

4 Guiding principles

How would guiding principles affect how the Domestic Violence Act and other legislation is implemented? What principles would you suggest?

How could including principles in the law reflect the nature and dynamics of family violence? For example:

- *Include principles emphasising developments in the understanding of family violence*

[4] Hilton, N. Z., Harris, G. T., & Rice, M. E. (2010). *Risk assessment for domestically violent men: Tools for criminal justice, offender intervention, and victim services*. Washington DC: American Psychological Association.

[5] Stark, E. (2007). *Coercive Control: How men entrap women in personal life*. Oxford/New York: Oxford University Press.

- *Include principles that guide how agencies are expected to respond to family violence, including particular population groups.*

What other ideas do you suggest?

We support the idea of including guiding principles in the Domestic Violence Act. New Zealand's response to domestic violence is severely hampered by –

- a continuing lack of detailed understanding of domestic violence by the police, judges, lawyers and others
- lack of effective enforcement of laws designed to protect women and children; and
- grossly inadequate resources to provide an effective response to domestic violence.

We believe that incorporating guiding principles into the Act would assist with educating judges and others about domestic violence, and would also help to guide them when they make decisions in cases involving domestic violence. We agree with the preamble to the Family Violence Protection Act 2008 in Victoria, Australia, which states that "family violence is a fundamental violation of human rights and is unacceptable in any form."

If guiding principles are to be included, the paramount principle must be the safety of women and children. Any other approach would pose a risk to women and children. The Government was specifically warned by anti-domestic violence advocates about the importance of sections 58 to 61 of the Care of Children Act 2004 (previously section 16B of the Guardianship Act 1968) when it was making its changes to the Family Court, but went ahead and changed the law in spite of those warnings. The ongoing tragic toll of domestic violence in New Zealand clearly illustrates that neither the law nor agencies is paying sufficient heed to the safety of women and children.

Domestic violence is a fundamental violation of human rights and unacceptable in any form and this fact should be spelled out. New Zealand adopts an extremely narrow approach to human rights, focusing primarily on the civil and political rights of men – and particularly male defendants – and almost completely fails to recognise the human rights implications of our high rates of domestic violence. For example, the killing of women by their partners breaches international human rights covenants (of which New Zealand is a signatory) and the women's right to life through the New Zealand Bill of Rights Act 1990's, (which puts some of these international rights into law). Coercive control breaches the woman's right to freedom of expression, and preventing the woman from leaving by insisting that her child stay in the location of the father breaches her right to freedom of movement. Women also have a right to legal representation. However, we continue largely to regard domestic violence as involving individual situations of men treating women badly, rather than looking at the overall picture.

The guiding principles should spell out that the safety of women and children trumps the perpetrator's right to privacy and concerns about "fairness" to perpetrators. We are aware of one judge who, when making decisions about protection order applications, made a practice of taking into account fairness to the respondent, although that is not a criterion included within the Domestic Violence Act.

The guiding principles should clearly state that Parental Alienation Syndrome and Situational Violence are not research validated concepts and are not to be applied by judges, lawyers or others.

We also believe that the principles should spell out a recognition of who the primary aggressor is in domestic violence cases, so that women seeking to defend themselves and their children are not mistakenly labelled as aggressors. In such cases, it is common for judges to mistakenly treat violence as "mutual" violence and disregard it altogether for decision-making purposes.

The discussion document refers at page 17 to "the value of taking a holistic approach to ensure the impacts on the whole family and whānau are addressed." The paper does not spell out what this means. We wish to make it plain that we are strongly opposed to a "therapeutic" approach to domestic violence, as is used in the Family Violence Courts within the District Court jurisdiction.

Other issues to be included within the guiding principles are the following –

- recognition that mediation and restorative justice are inappropriate and dangerous in domestic violence cases and should not be used;
- the importance of understanding of and an effective response to the domestic violence perpetrated against women with disabilities;
- culturally-appropriate responses to, and services for, women and children of different ethnicities.

5 Accessibility of protection orders

What changes would you suggest to improve access to protection orders? For example:

- *increase funding for applications for protection orders*
- *provide more opportunities for others to apply for protection orders on victims' behalf.*

What other ideas do you suggest?

A guiding principle should be that no-one should have to pay to seek safety for themselves or their children. It is in an obligation of the State to ensure that people have the right to safety. Women are currently shouldering the cost of their and their children's safety.

Protection orders are inaccessible for many New Zealand women. Reasons for this include the small number of lawyers who now do protection order work, and the high cost of applying for a protection order. Media reports in recent years have outlined that, in some parts of the country, there are no longer any lawyers doing protection order work. This trend can be expected to accelerate in future. Until recently, lawyers who specialised in family law could choose to make that their career focus and could earn a living from doing that. However, the Government's changes to the Family Court in 2014 mean that most family cases are now supposed to be dealt with without the involvement of a lawyer. This means that large numbers of family lawyers are currently retraining as specialists in other areas of law or as mediators or leaving law altogether. Accordingly, there are now even fewer lawyers who have the expertise necessary and who are willing to carry out protection order work.

Applying for a protection order is also expensive. Domestic violence is a violation of the women's and children's human rights, and it should be the responsibility of the state to provide funding to keep women and children safe. However, restrictions on legal aid have become so tight in recent years that it is available only in extremely limited cases of the harshest financial suffering. This means that women must find money to pay lawyers themselves. Women in the workforce earn an average of 14 per cent less than men and represent the highest number of workers earning the minimum wage. They simply do not have the resources to pay for protection orders.

This combination of factors means that women are not receiving the legal protection intended by the law. All women in New Zealand should be able to apply for protection orders, with funding and lawyers readily made accessible by the state. There should be no requirement to repay lawyers' fees. If lawyers and funds are not provided, there is no point in passing laws designed to protect women as they will, in practice, be unable to access this protection.

We believe that the discussion document's statement on page 21 that "Most people who apply for legal aid will receive support" does not accurately reflect reality. While it might be correct that most

applications are successful – although no statistics are cited – there is major self-filtering prior to an application being made. Family legal aid applications are completed by lawyers – they are well aware of the tight restrictions on legal aid and will advise clients not to waste their time in making applications when it is clear they will be unsuccessful. Many members of the public are also aware that it is extremely difficult to qualify for legal aid, and so they decide themselves not to apply.

We agree in principle that it could be constructive for others to be able to apply for protection orders on victims' behalf, but we are very sceptical about how this would operate effectively in practice. The paper suggests, for example, that Community Law Centres could assist women in applying for protection orders. This demonstrates a lack of understanding of the practical operation of Community Law Centres.

Community Law Centres have extremely tenuous funding. The lawyers who work in the centres are poorly paid and are therefore likely to be very inexperienced. They have far more cases and clients than they can adequately deal with. Community Law Centres tend to specialise in certain areas of the law and many would have little or no experience with domestic violence work. Unless the Government is prepared to make extra funding available to the centres on a permanent basis and provide extensive training about domestic violence to lawyers working in the centres, we cannot see how this would assist women. Governments, and particularly Ministers of Justice, frequently suggest publicly that Community Law Centres could take on many different areas of work (particularly when governments are cutting funding) but they appear to have little practical knowledge that Community Law Centres are simply not in a position to do this because of lack of resources and legal expertise.

We support in principle the idea of following the Victorian model of permitting police to apply for protection orders on victims' behalf. However, as discussed above in relation to Community Law Centres, unless resources and training are provided to police, this will not operate effectively in practice, and may prevent some women from using the Police when they need them in the future.

Since the Domestic Violence Act first came into force, there has been a practice of lawyers and judges agreeing to "undertakings" as a substitute for protection orders. This practice should be banned by law. Undertakings have no legal effect and cannot be enforced. They simply serve to make judges and lawyers think they have done something to protect a victim – in reality, they have not.

The other reason that protection orders are not accessible is because judges fail to apply the Domestic Violence Act in making decisions about protection order applications. We are aware of specific cases involving the following –

- a Family Court judge who as a matter of course considered fairness to the respondent when deciding whether or not to grant protection orders without notice. This is not a criterion included in the Domestic Violence Act
- a Family Court judge who did not grant protection orders without notice when the women and children were in a refuge, as he considered they were safe there and accordingly believed it was not necessary to grant the order
- a Family Court judge refusing to grant a final protection order because of the relative youth of the parties. The respondent and his family drove away from court afterwards in a victorious mood, honking at the victim and jeering at her. She was left believing that the legal system would not protect her
- Family Court judges declining to grant protection orders without notice unless there has been physical violence within the past couple of days. Some judges treat violence a week ago as being too distant to justify the granting of a protection order without notice.

These examples explain how the judiciary is failing to apply the Domestic Violence Act correctly, as does the Surrey vs Surrey Appeal Court finding, which very clearly stated the imperative to provide protection orders once domestic violence had been found. There is no grounds for judicial descretion nor should there be once domestic violence has been found. The rationales used above are not grounds included in the Act and on which judges should be making decisions.

As long ago as 1999, a group of family lawyers at Manukau Court asked to meet with Family Court judges to express their concerns about how difficult it was to obtain protection orders without notice. We believe that judges have continued since that time to misapply the law. Judges need to be given detailed and ongoing training about domestic violence and the Domestic Violence Act.

It is our experience that, if a protection order is not granted without notice, it is extremely rare for the woman to be granted an order at all. The delay in proceeding on notice means that the woman will come under pressure from the respondent to withdraw the application; she may be too fearful to proceed and too scared to come to court; she and the children may have fled; or the respondent may hide to avoid service of the application. The failure of judges to apply the law correctly when initially considering protection order applications accordingly has massive implications in practice.

6 Effectiveness of protection orders

What changes could enhance the effectiveness, use and enforcement of protection orders? For example:

- *Require police to arrest for all breaches of protection orders, where there is sufficient evidence.*
- *What other ideas do you suggest?*

Enforcement of protection orders has been grossly inadequate throughout the entire time the Domestic Violence Act has been in force. The key reasons for this are that the police are completely under-resourced to deal effectively with breaches of protection orders, and lack training and detailed knowledge about domestic violence. Many police officers are very young and inexperienced and have little understanding or experience of domestic violence. This leads them to treat violence events as isolated incidents, instead of placing them in the ongoing context of power, control and violence.

We support the discussion document's suggestion that the police should be required to arrest for all breaches of protection orders, but we would remove the qualification "where there is sufficient evidence." If that qualification is retained, it would make a requirement to arrest ineffective, as we know from experience that the qualification would be applied in large numbers of cases.

It is startling that the police do not ALREADY arrest in all cases of breaches of protection orders: not to arrest makes the order ineffective and leads to the perpetrator believing he can flout the law with impunity and the victim thinking the law will not protect her. Sadly, she is often correct in this assessment.

Police should be trained and required to arrest for all protection order breaches – including cases where the breach involves harassment by phone or internet, stalking and other breaches apart from physical violence. The police are reluctant to respond properly unless victims have been physically assaulted. This is an incorrect application of the law.

Respondents should also be charged for all breaches of protection orders. The ongoing police failure to do this makes protection orders useless to protect women and children and has led to the widely-used description of them as "just a piece of paper."

Judges should be prohibited from granting diversion or discharges without convictions for breaches of protection orders. Convictions should be entered for all breaches. The Livingstone Inquest revealed that Mr Livingstone was twice found guilty of breaching a protection order. On the first occasion, he was granted diversion. On the second, he was given a discharge without conviction as the judge was concerned about the potential impact of a conviction on Mr Livingstone's future employment prospects. The judge accordingly prioritised Mr Livingstone's employment at the expense of the safety of his wife and children.

Diversion is granted in minor cases. Domestic violence is never minor. Granting diversion for breaching a protection order illustrates a complete lack of understanding of the dynamics of domestic violence and a failure to give priority to the safety of women and children.

We refer to page 22 of the discussion document, which considers how police can improve the prosecution of protection order breaches and, in particular, the collection of evidence. We support a trial of recording video statements at the scene, modelled on the United Kingdom's 2013 police pilot. We are concerned about the extent to which police, lawyers and judges believe that testimony from the victim is essential to obtaining a conviction. There are many reasons why victims are not able to appear in court to give evidence – primarily intimidation by the perpetrator and a very real fear of being seriously assaulted or killed if they give evidence against their violent partner. Police should accordingly place far greater emphasis on obtaining and putting before the court other forms of evidence. It continues to be extremely common for prosecutors simply to withdraw charges when the victim does not appear in court to give evidence.

We have read the Law and Order Committee's report on Petition 2011/124 of Ann Hodgetts and 744 others. We share the petitioner's concerns about the effectiveness and enforcement of protection orders. The police and judges have never consistently applied the Domestic Violence Act properly in almost two decades, thereby undermining the intent and effectiveness of the act and jeopardising the safety of women and children.

We agree with the Committee's recommendation that the Ministry of Justice should examine protection orders as a crucial aspect of the current review of the effectiveness of domestic violence legislation. We also agree with the Committee's recommendation that the Ministry should develop strategies to reduce the number of protection order breaches by addressing underlying issues. However, we do not agree that alcohol and drugs are the key underlying issues. The key underlying issue is male attitudes towards women. We believe that focusing on violence and drugs are red herrings which do not address the real issue.

We also disagree with the Committee's recommendation that renewable expiry dates should be set for protection orders. This might appear a superficially attractive idea, but we do not believe that the Committee understands the practical implications it would have. The Domestic Violence Act 1995 was passed following a report prepared by Sir Ronald Davison in the wake of the killing of Claudia, Tiffany and Holly Bristol by their father. Prior to the 1995 act, protection orders expired if the parties reconciled. It is a feature of the 1995 act that protection orders now remain in force even if the parties reconcile. This is to protect the women and children.

There may be a number of separations and reconciliations. If the woman has to apply for protection orders repeatedly, she will not do this. It is extremely expensive, time-consuming and stressful

obtaining an order. The current system of orders remaining in force once they are made final should be retained. We recognise that the Committee in recommending renewable expiry dates on protection orders intended to assist with more effective case management of protection orders. However, the most dangerous men are the men who stalk their ex-partners post-separation. Such stalking can continue for years and follow periods of imprisonment of the offender.

Our experience of the lack of resources in the Family Court convinces us that reviews would not take place as intended by the Committee. This can be seen by the way in which the six week requirement in the act for determining violence allegations is seldom adhered to. We are also concerned that renewable expiry dates would lead to confusion among police officers as to whether or not a protection order still existed and should be enforced by the police. In the period after the Domestic Violence Act came into force, the police would in some cases refuse to enforce protection orders if they were a couple of years old. They would say they would only act if the woman obtained a new order. This was not what the law said, but this was what actually happened in practice. That is why we support the current system of orders remaining in force once they have been made final.

7 Property orders

What changes would enhance the effectiveness, use and enforcement of property orders? For example:

- *Require judges to consider accommodation needs when making protection orders and to make property orders more proactively*
- *Simplify enforcement mechanisms.*

What other ideas do you suggest?

Lack of affordable and safe alternative accommodation remains a major barrier to women and children leaving violent relationships. All too often they have nowhere to go. Last night, for example, a domestic violence victim was seeking refuge accommodation in Auckland but there was not a single spare bed anywhere. This is often the case.

In the past, there has been an emphasis on women and children leaving the home and seeking sanctuary in a refuge. This is incredibly disruptive to the women's and children's lives and all too often means the children cannot attend their normal schools and the woman might not be able to get to work. This has long-term consequences.

We strongly support an assumption that the women and children should remain in the home, and the perpetrator should be required to leave. Judges should accordingly make property orders whenever they grant protection orders. Increased funding needs to be provided so that the homes of all domestic violence victims can be fitted with alarms and other protections as in the scheme piloted by Shine, the *Shine safe@home programme*. It is abhorrent that victims of violence are expected to leave their homes and safe and secure accommodation is not made available to them.

We do not have statistics but suspect that property orders are rather rarely used. It would be good for statistics to be collected and analysed so that it can be ensured that judges greatly increase their use of property orders.

No man who uses domestic violence should benefit financially from his abuse[6]. Currently at the point of separation many men who use domestic violence against their partners get half of the marital property although the Property (Relationships) Act 1976 does have provision for unequal

[6] Postmus, J. L., Plummer, S.-B., McMahon, S., & Murshid, N. S. (2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence, 27*(3), 411-430.

division[7]. This division of property particularly benefits those men with very little who enter a relationship with woman who has property of her own. If these men stay in the relationship for more than three years, or keep the woman confined in this relationship for this period, they will legally leave with half of the woman's property. This has caused many woman in this predicament undue hardship, particularly those older women or women with disabilities who may have worked and saved all their lives to get their own homes. When coercive control or confinement is used against the woman the 3 year period of living together prior to considering property as marital property should not apply to the women's pre-cohabitation property or any inherited property, which she receives during the course of the relationship.

8 Police safety orders

What changes might enhance the effectiveness, use and enforcement of Police safety orders? For example:

- *Require Police to refer a perpetrator to services, such as short-term housing*
- *Empower Police or a third party to support the victim to apply for a protection order, or apply on behalf of a victim, when a Police safety order is issued (if the victim consents, or does not object).*

What other ideas do you suggest?

We believe that the current duration of Police safety orders – between three and five days – is too short. They should last for a longer period.

We also consider that breaching the orders should be an arrestable offence. We agree with the areas for improvement outlined on page 24 of the discussion document following the evaluation of Police safety orders.

While it would be helpful for perpetrators to be referred to services such as short-term housing, we believe the emphasis should be on providing safe accommodation for the women and child victims. The position in that regard is currently inadequate, so it is our view that this should be improved before attention turns to providing housing for perpetrators.

All police need training on who is the primary aggressor and who is the primary victim. This training would prevent the mutual arrest of both parties from occurring. Mutual arrests tend to be made by young experienced officers. Police need to have in place a system of consultation with senior officers prior to any mutual arrest in the context of domestic violence.

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[7] See s18A
Effect of misconduct of spouses or partners
(1) Except as permitted by subsections (2) and (3), a court may not take any misconduct of a spouse or partner into account in proceedings under this Act, whether to diminish or detract from the positive contribution of that spouse or partner or otherwise. (2) Subject to subsection (3), the court may take into account any misconduct of a spouse or partner—(a) in determining the contribution of a spouse to the marriage, or of a civil union partner to the civil union, or of a de facto partner to the de facto relationship; or(b) in determining what order it should make under any of sections 26, 26A, 27, 28, 28B, 28C, and 33.(3) For conduct to be taken into account under subsection (2), the conduct must have been gross and palpable and must have significantly affected the extent or value of the relationship property. Section 18A: inserted, on 1 February 2002, by section 17 of the Property (Relationships) Amendment Act 2001 (2001 No 5). Section 18A heading: amended, on 26 April 2005, by section 3(1) of the Property (Relationships) Amendment Act 2005 (2005 No 19). Section 18A(1): amended, on 26 April 2005, by section 3(2) of the Property (Relationships) Amendment Act 2005 (2005 No 19). Section 18A(2): amended, on 26 April 2005, by section 3(4) of the Property (Relationships) Amendment Act 2005 (2005 No 19). Section 18A(2)(a): amended, on 26 April 2005, by section 3(4) of the Property (Relationships) Amendment Act 2005 (2005 No 19).

9 Family violence and parenting arrangements

How should risks to children and to adult victims be reflected in parenting arrangements under the Care of Children Act 2004? How could parenting orders and protection orders be better aligned? For example:

- *Clarify that a child's safety from all forms of violence is to be given greater weight and be a primary consideration*
- *Require parenting orders to be consistent with any existing protection order*
- *Courts could be given broader discretion to consider risk to the safety of the child and to an adult victim when deciding parenting arrangements.*

What other ideas do you suggest?

We strongly urge that all three of the points canvassed in the bullet points above be implemented immediately. Following the killing of the Tiffany, Holly and Claudia Bristol by their father, Sir Ronald Davison prepared a report which led to the passing of the Domestic Violence Act 1995. The aim was to provide better legal protection to women and children from domestic violence. In particular, section 16B was inserted into the Guardianship Act to protect children in cases of domestic violence. However, this protection was removed when the Family Court changes were made by the Government, despite strong submissions against doing this by those working to combat domestic violence.

The safety of children must be the paramount consideration when parenting arrangements are being made. Judges must be required in every case to give priority to the implications of the existence of a protection order when making decisions about parenting arrangements. That is not what happens in practice. Instead, a majority of Family Court judges give priority to ruling that fathers should have ongoing contact with children at virtually all cost and regardless of the threat to the safety of the women and children. This means that parenting orders and protection orders essentially contradict one another.

This issue was also raised at the meeting with Family Court judges held at the Manukau Court in 1999 and referred to earlier in this submission. Judges were not able to provide any explanation for the contradiction.

Women may seek to move to a different part of New Zealand to get themselves and their children away from a violent husband and father who presents an ongoing risk. However, all too often the Family Court will give priority to the father's "right" to contact with the children and will ban the woman from moving to a safer location.

There are two particularly dangerous aspects of the current operation of the Family Court which run counter to the Domestic Violence Act and to efforts to protect women and children from domestic violence. The first of these is the continuing application of Parental Alienation Syndrome. The second is the application of so-called "situational violence." We discuss each of these in turn below.

It is a deep concern and a major threat to the safety of women and children that the New Zealand Family Court continues to apply the doctrine of Parental Alienation Syndrome, which has long been discredited in the United States, from where it originated[8].

[8] Holt, Jennifer (2006) The evidentiary admissibility of parental alienation syndrome: Science, Law and Policy. *Children's Rights Journal*, 26 (1),1-61;
Walker, L., et al. (2010). "Response to Johnston and Kelly Critique of PAS article." Journal of Child Custody **1**(4): 91-97.
Walker, L., et al. (2004). "A critical analysis of parental alienation syndrome and its admissibility in the Family Court." Journal of Child Custody **1**(2): 47-74.

It is now accepted in the United States that there is no scientific evidential basis for Parental Alienation Syndrome. No research conducted in the United States has ever been able to produce valid evidence of Parental Alienation Syndrome.

Parental Alienation Syndrome is a term coined by Richard Gardner in the United States in the early 1980s. The term achieved influence and the so-called syndrome began to be applied in courts making decisions about the care of children after Gardner widely circulated his book about the so-called syndrome among judges and lawyers. Gardner subsequently "trained" thousands of judges and lawyers, both in the United States and in New Zealand. He claimed that the vast majority of children who reported sexual abuse were fabricating what they said and had been alienated and coached by their mothers.

As early as 1993, research in the United States questioned the existence of Parental Alienation Syndrome. More than 500 studies have now been conducted into Parental Alienation Syndrome and not one of them has been able to reproduce the eight characteristics claimed by Gardner. Gardner's books were all self-published and none was peer reviewed. His books were not based on research.

American lawyer John Myers in 1993 argued that there was no empirical evidence to show that the eight claimed characteristics of Parental Alienation Syndrome were a syndrome. Some research in addition to that footnoted about Parental Alienation Syndrome is as follows:

- "Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases," Carol S Bruch, *Family Law Quarterly 35, 527 (2001);*
- "The Parental Alienation Syndrome: A Dangerous Aura of Reliability," Cheri L Wood *Loyola of Los Angeles Law Review 29: 1367-1415 (1994);*
- "Alienation and Alignment of Children," Philip M Stahl, *Complex Issues in Child Custody Evaluations,* Sage Publications, 1999;
- More recently, Dr Robert Geffner, President of the Institute on Violence, Abuse and Trauma, has written and spoken extensively on the devastating impact of the continued application of Parental Alienation Syndrome in the making of child custody decisions.

The American Psychological Association's Presidential Task Force on Violence and the Family in 1996 reported that many mothers were losing custody cases in which there were concerns about domestic violence because abusive fathers were able to convince the court that the mothers were engaged in alienating behaviours. This tragic and frightening outcome continues to happen until this day in the Family Court in New Zealand: judges are dismissing and ignoring reports of violence by women and children on the grounds that these are fabrications designed to alienate the children from their father.

Gardner's recommendations were that the mother reporting violence and abuse should be encouraged to stay with the abusive father; she should be helped over her "anger"; and the child should be placed in the father's care in cases of separation.

In cases where women and children report abuse and violence, the application of Parental Alienation Syndrome means that children are threatened with being removed from their mother's care if they persist with their reports of abuse; mothers are threatened with having children removed from their care if they continue to report; and judges in some cases have placed the children in the care of the abusive parent and even gone so far as to cut off contact with the protective parent.

Bancroft & Silverman's research reported that families with "the greatest degree of psychological health among mothers and children appear to be among those most vulnerable to being labelled as having "parental alienation." This is because the children have a secure attachment to the protective parent and – completely rationally and understandably – reject outright the abusive behaviour of the batterer on separation. However, instead of the courts and professionals listening to the women and children, their reports of violence and abuse are dismissed as false complaints arising from alienation.

One American study found that batterers were able to convince authorities that domestic violence victims were unfit or undeserving of sole custody of children in 70 per cent of cases in which custody was challenged. On appeal, when some of these situations were more deeply investigated, the allegations made by the women and children were found to be substantiated and the decisions to place the children in the care of the batterer were reversed. Joan Meier studied 2001 case law in the United States and identified 38 appellate state court decisions concerning custody and domestic violence. She found that 36 of the 38 trial courts had awarded joint or sole custody to the alleged and adjudicated batterers. Two-thirds of those decisions were reversed on appeal. However, there are incredibly few appeals in family cases. Women lack the financial resources to pursue appeals, which are an incredibly traumatic and time-consuming exercise, and Appeal Court judges have found, on the rare occasions when appeals have occurred that appeals involving care of children in this context are not of public interest and have refused the right to proceed.

The judgment of Justice Moore in the High Court at Auckland in the case of *F v P* [2015] NZHC 1362 was released on 16 June 2015. Justice Moore, who was Crown Prosecutor for Auckland and had no background in family law prior to his appointment to the Bench, discussed alienation in great detail in a 149-paragraph judgment. Justice Moore determined that the clearly-expressed wishes of the son should be ignored, stating that –

"Plainly, in the present case where T exhibits such high levels of antipathy towards his father, falsely alleges assault and holds his father singularly responsible for the difficulties he faces in life, the vehemence of his opposition must be placed in context. In the circumstances I attribute relatively little weight to his opposition."

These comments run completely contrary to the evidence provided by research, which clearly shows in many studies over many years that false complaints of abuse and violence are incredibly rare. Dr Daniel Saunders' 2010 research relating to the beliefs of judges and custody evaluators found that they believed that –

- Victims made false allegations
- Victims alienated their children, and
- Fathers did not make false allegations of abuse.

All of these beliefs run contrary to what evidence has established. Bala & Schuman's 1999 Canadian research found that when accusations made in child custody and access disputes were reviewed, 21% of allegations by fathers were judged to be false, while 1.3 % by mothers were judged to be false. Trocme and Bala's 2005 Canadian research was based on a sample of 7632 cases. It found that

4 % of allegations of child abuse by children against parents in cases of child maltreatment were maliciously fabricated. In disputed child custody cases, fathers were found to bring 43% of all intentionally-fabricated allegations, while custodial parents (usually mothers) brought 14%.

Judges, lawyers and others in the New Zealand Family Court urgently need to cease applying this non-existent syndrome. Their ongoing use of it is undermining the law and jeopardising the safety of women and children.

Secondly, the New Zealand Family Court also continues to apply the non-existent concept of "situational violence" in domestic violence and contact and care cases. "Situational violence" is said to be violence which occurs only at the time of separation, and which can therefore be disregarded as it relates only to a finite period in time.

There is no such thing as situational violence. Violence is violence. The application of the term "situational violence" by judges, family lawyers, lawyers for children and others working in the Family Court means that women and children are not getting the legal protection the law is designed to provide.

All cases of violence should be treated seriously. In one recent Family Court case in New Zealand in which the woman had repeatedly been subjected to severe physical violence for which she had been hospitalised, she was asked whether she had ever been violent. When she truthfully replied that she had in frustration thrown some of the father's possessions outside, the judge ruled that the case was one of mutual "situational violence" and appropriate for shared care of the children. This was despite evidence of the mother's injuries being provided in medical reports. There is evidence that judges and Family Court report writers bring with them their biases concerning family court cases and enact these in the Court. Much needs to be done to educate judges and report writers in order that these biases are not enacted in Court judgements[9].

Judges in New Zealand continue to operate according to the following mistaken beliefs –

- Intimate partner violence has no correlation with child abuse and unfit parenting. This is completely incorrect[10].
- What happens between the parents does not affect the children.
- A woman must facilitate access to the children's father regardless of danger.
- If the woman has sought physically to defend herself from violence by the father, the case is one of mutual violence and violence should accordingly be disregarded as an issue.
- Maximum contact with both parents is essential and beneficial for all children.

Evidence does not support any of these beliefs.

Women are repeatedly told by family lawyers and lawyers for the children not to report violence or abuse as their reports will not be believed, they will be described as "alienating" parents, and the reports are more likely to lead to the violent man obtaining sole care of the children. This is absolutely shocking and exactly the opposite of what should be happening. It is no wonder that there is an epidemic of domestic violence in New Zealand and that it is continuing to rise, rather than to fall.

[9] Naughton, C. M., et al. (2015). "'Ordinary decent domestic violence': A discursive analysis of family law judges' interviews." Discourse & Society **Early online**: 1-17.

[10] Edleson, J. L. (1999). "The overlap between child maltreatment and woman battering." Violence Against Women **5**(2): 134-154.

Until the New Zealand Family Court stops applying the unsubstantiated concepts of Parental Alienation Syndrome and situational violence, there is no point in passing further laws designed to protect domestic violence victims and reduce domestic violence. They will be utterly ineffective if judges and lawyers continue to misapply the false lens of these non-existent concepts to the new laws.

We are perturbed and disappointed by the second-to-last paragraph on page 27 of the discussion document, which states that "There may also be concerns raised about the risk that protection orders will be used for tactical advantage, and re-litigation of protection orders through Care of Children Act 2004 proceedings." This sentence is abhorrent. It continues the misogyny in our law which has been present for hundreds of years and is based on men asserting that women frequently lie and are "vindictive". All the evidence is utterly to the contrary. New Zealand does not have a problem with women using protection orders for "tactical advantage." As clearly stated in the report, New Zealand has a problem with an epidemic of domestic violence, which the legal system has been ineffective in addressing or reducing over decades. We refer to pages 4 and 5 of the report, which record that New Zealand has the highest reported rate of intimate partner violence in the developed world (despite it being estimated that only 20 per cent of domestic violence cases are reported to police) and that police responded to more than 100,000 domestic violence events in 2014. We also urge government agencies and the Government to stop referring to domestic violence events as "incidents." "Incidents" are minor occurrences and it is therefore inaccurate to use this word in relation to domestic violence. Domestic violence usually involves a pattern of coercive behaviour sometimes with unpredictable violence.

10 Family violence in criminal law

What changes, if any, could be made to the criminal law to better respond to family violence, including the cumulative harm caused by patterns of family violence?
For example:

- *Create a standalone family violence offence or class of family violence offences*
- *Create a new offence of psychological violence, coercive control or repeat family violence offending*
- *Make repeated and serious family violence offending an aggravating factor at sentencing.*

What other ideas do you suggest?

We agree that new offences as outlined in the two bullet points above could be created, alternatively existing offences could be flagged as domestic violence. These changes are essential to reflect the ongoing pattern of abusive and violent behaviour typified in domestic violence.
We also strongly agree that domestic violence should be an aggravating factor in sentencing. It should as a matter of course be treated as an aggravating factor – we do not believe that the qualifications of "repeated" and "serious" are required. At present, when defendants convicted of offences in a domestic violence context are sentenced and the judge sees they have previous convictions for such offending, the judge asks whether the earlier convictions relate to the same victim. If the earlier convictions relate to a different woman, the judge regards the matter as being less serious. This approach must be stopped immediately. It is unacceptable for a defendant to be repeatedly committing offences against the same partner. However, it is equally unacceptable for defendants to commit offences against a series of women – which is an all-too-common scenario.

We also record our deep concern about the eight Family Violence Courts operating within the District Court jurisdiction. These were set up to try and ensure that the criminal court dealt better with domestic violence. However, this is unfortunately not what has eventuated in practice.

The Family Violence Courts in the District Court often apply a so-called "therapeutic approach" when dealing with cases. This is completely wrong. Their key focus should be on the safety of women and children. A therapeutic approach not only fails to focus on safety: it actually jeopardises safety as the focus is on the couple reconciling. The focus should instead be on providing adequate resources so women and children can permanently escape from violent relationships.

We submit that no further Family Violence Courts should be established and that there should be a detailed review of the ones which are already operating with a view to making major changes to them if they are to continue.

11 Victim safety in bail and sentencing

What changes would ensure victim safety is considered in bail decisions and sentencing decisions? For example:

- *Require judges to make victim safety the paramount consideration in bail decisions in all family violence offences or for specific charges such as male assaults female*
- *Empower judges to place additional conditions on people on bail or remanded in custody for any family violence offence*
- *Improvements to bail.*

What other ideas do you suggest?

We agree that victim safety should be the paramount consideration in bail decisions in all cases involving domestic violence, as well as for specific charges such as male assaults female. It is staggering that this is not already the case. There should be no qualifications to this requirement: judges should always consider victim safety as the top priority. This is essential under human rights obligations.

We believe that the safety of women and children would be enhanced if police did more monitoring of bail conditions but they lack the resources to do this.

Domestic violence victims are asked in open court, in front of both the defendant and his lawyer, whether they want the defendant to be bailed and whether they want to resume the relationship. This places the woman in an invidious and dangerous position. It should be the judge's responsibility to make these decisions and this should be plain to the defendant. Placing the responsibility on the woman makes her extremely vulnerable once the defendant is released from custody.

Judges and the police require detailed and ongoing training in relation to domestic violence. The failures by the police and the courts to protect domestic violence victims in the past 20 years demonstrate all too clearly the lack of understanding by the police and judges about domestic violence. In particular, it is vital that the police and the courts look at the history of the situation, rather than looking at each event in isolation. When they do the latter, they are all too inclined to dismiss particular events as trivial. However, when such events are seen in context, the pattern of harassment and intimidation and flouting of the law becomes apparent.

The role of Court Victim Advisers is extremely unsatisfactory and widely misunderstood. In fact, they are not actually advocates for victims. It would be best if the role of Court Victim Adviser was abolished and replaced with Court Victim Advocates whose role it was to advocate on behalf of victims.

We support judges having access to all information about a perpetrator's previous violence and abuse offences, including violence and abuse against previous partners and others (for example, siblings, parents, children). We support the introduction to New Zealand of a law based on the

United Kingdom's "Clare's Law," which would allow women to obtain information about the violence histories of their partners.

We strongly support the announcement by Justice Minister Amy Adams on 26 August 2015, when she stated that there was a to be a pilot programme run in Porirua and Christchurch involving providing new reports on defendants' family violence histories to judges when they make bail decisions. We hope that this pilot will prove positive in practice and will then speedily be extended to the rest of New Zealand and be made permanent. It is essential for judges to have full information when making bail decisions.

We also strongly support the announcement by Minister Adams on 1 September 2015 of new information sharing rules between Family and Criminal Courts as part of work to reduce domestic violence. It is essential for judges to have access to all information relating to violence and the history between the parties so that judges are aware of the pattern of violence in a relationship and can make informed decisions. However, until judges are educated fully about domestic violence and its consquences we are concerned that such information sharing may be prejudicial to women who are victims of domestic violence, if their raised concerns about safety are constructed as vindictive.

It is also vital for judges to have access to defendants' criminal histories from overseas, particularly Australia. We understand that this was a work stream that was begun several years ago. We hope it will result in judges being able to obtain information from overseas. The Livingstone Inquest report earlier this year revealed that, when judges granted Mr Livingstone diversion on a first charge of breaching a protection order and a discharge without conviction on a second charge of breaching a protection order, there was no judicial knowledge of Mr Livingstone's prior history of arson against a previous partner in Australia.

12 Judicial powers in criminal proceedings

What powers should criminal court judges have to vary or suspend orders usually made by the Family Court, or to make orders at different stages in proceedings? For example:

- *Give judges in criminal proceedings greater powers to vary protection orders on the basis of information they hear during trials*
- *Empower judges in criminal proceedings to refer the question of varying a protection or parenting order directly to the Family Court.*

What other ideas do you suggest?

We have difficulty in envisaging how this would operate in practice and are concerned about whether it could actually jeopardise the safety of women and children. We would like more information about exactly what issues this proposal is designed to address. We believe that, if consideration were to be given to giving criminal court judges such powers, a pilot would need to be run to ascertain how this would operate in practice. We do not believe that enough details are provided on page 36 of the discussion document, where this is discussed, to enable us to provide a considered response.

Judges should not have discretion about the provision of protection orders or varying of protection orders if domestic violence has been found. Protection orders must be given under these circumstances and must be retained.

13 Best practice

What changes would you suggest to court processes and structure to enable criminal courts to respond better to family violence?

The Family Violence Courts operating in the District Court should be thoroughly reviewed. They should immediately cease applying a "therapeutic" approach in domestic violence cases.

Instead of Family Violence Courts, consideration should be given to establishing domestic violence courts which would operate with specially-trained judges and lawyers. We support remarks made by Justice Minister Amy Adams on 28 August 2015, when she suggested such courts should be established and judges and defence and prosecution lawyers could be specially warranted to work in them.

We record our concern about cost-cutting at District Courts which is leading to the merging of family and criminal reception counters. These were in the past separate. Similarly the move to District Courts having only one entrance has meant the closing of separate entrances previously used for Family and Youth Courts. This is yet another example of cost-saving being given greater priority than the safety of victims.

Victims of domestic violence and their children should not have to be exposed to offenders attending the criminal courts.

14 Additional pathways

What are your views on an additional pathway for families who seek help to stop violence escalating? Is such a pathway necessary or appropriate?
What are your views on the range and type of services that might be appropriate in the circumstances?
What are your views on clarifying in law that Police take at least one of the following steps when responding to family violence reports:

- *File a criminal charge (or issue a warning)*
- *Issue a Police safety order*
- *Make a referral to a funded service or services or an assessment?*

What other ideas do you suggest?

We support the provision of counselling and Stopping Violence programmes to perpetrators at all times. We support the provision of counselling and appropriate services for victims and children. In order for any changes made in this regard to be effective, considerable extra resources would be required.

Perpetrators can access free Stopping Violence programmes if a protection order has been made against them but otherwise are required to pay for programmes. There are too few programmes and many perpetrators cannot afford to attend them. Getting in early with offenders is important and the best results occur with those attending voluntarily rather than through the coercion of the Courts. Adequate screening needs to occur to ensure that those offenders who are psychopaths do not follow the same course as others and are provided with alternative and appropriate other pathways of surveillance and management.

There has never been enough funding for programmes for women and children and facilitators of these programmes have consistently been paid less than those facilitating programmes for male offenders. Women need to be able to access the programmes, particularly group support

programmes, which will aid with their safe exit from these relationships and with their recovery from the trauma of the abuse.

Programmes for children who have experienced the trauma of exposure to domestic violence have never been adequately funded. Programmes designed to keep homes safe from offenders and that provide immediate access to the Police when breaches of orders occur will help these children.

We support police being required to take prescribed steps in all cases.
We do NOT support the use of restorative justice or mediation in cases involving domestic violence. There is a power imbalance which makes restorative justice and mediation completely inappropriate in such cases. We are very concerned by developments this year which appear to indicate an intention to use restorative justice in domestic violence cases. We were disappointed and alarmed to hear Justice Minister Amy Adams says that she supported this. We attended Professor Leigh Goodmark's Auckland lecture earlier this year and were very concerned about what she said. We do not support her suggestions for alternative ways of dealing with domestic violence cases.

We can understand that some women would prefer to go through a mediation process or are required to because they have lost confidence in the family court processes or because of property division negotiation. In these circumstances great care needs to be taken to ensure that safety is paramount, through, for example, video conferencing so that the woman and the abuser are not in the same room. Advocacy and skilled mediators knowledgeable about domestic violence must be provided.

15 Information sharing between agencies
What changes could enhance information sharing between agencies in family violence cases? For example:

- *Creating a presumption of disclosing information where family violence concerns arise*
- *Stating that safety concerns "trump" privacy concerns.*

We believe that safety concerns should be given priority over the privacy of the perpetrator. We support the introduction of a new law in New Zealand modelled on "Clare's Law" in the United Kingdom.

Strenuous safeguards need to be in place to ensure that information about victims does not fall into the hands of perpetrators or perpetrators' family members or friends. We are aware that perpetrators sometimes ask acquaintances to search for new and confidential addresses for victims in the computer systems of government agencies.

16 Information sharing with and between courts
What changes could enhance information sharing between courts and other agencies, in family violence cases?
For example:

- *Require that judges are provided with information held by Police and other justice sector agencies*
- *Place a positive duty on parties to inform the criminal court of any related Family Court proceedings or orders.*

What other ideas do you suggest?

We support the above suggestions, but maintain some reservations about the quality of information provided when it comes from uneducated sources. We have discussed earlier the shortcomings in

the Livingstone case, when judges were not aware that Mr Livingstone had committed arson in respect of a former partner's property in Australia.

The positive duty should apply to counsel as well as to the parties.

17 Safe and competent workforce

In your view, what impact would setting minimum workforce and service delivery standards have on the quality of services?

What challenges do you see in implementing minimum statutory standards? For example,

- *Establish minimum standards for workforce competence*
- *Require agencies and service providers to put in place policies and systems that support the workforce to practise in a responsive, safe and competent way.*

What other ideas do you suggest?

In 2007, the Ministry of Women's Affairs commissioned a report called 'Living at the ***cutting edge'***: Women's experiences of protection orders'. According to this report:

> "Here, we are following the call of Lord Justice Nicholas Wall for judges and other professionals working in the Family Court to be well trained – and to maintain their training at an appropriate level.
>
> Many of the problems we have identified – the raising of the threshold for granting without notice protection orders, making dangerous parenting orders, misinterpreting children's wishes in the context of domestic violence, minimising the impact of psychological violence, being overly optimistic about men's commitment to change, minimising the risks an abusive parent presents to his children and to their recovery from the trauma of violence, using a discredited typology of domestic violence – each of these is reflective of significant ignorance of recent research and good practice standards in the field."

Tragically, these problems in the Family Court are still pervasive, and there is still no better training available, much less required, for judges and other professionals working within the Family Court.

We echo the Cutting Edge report recommendation eight years later that **"the Ministry of Justice ensure that all professionals (for example, judges, counsel for the child, specialist report writers, mediators, counsellors and supervised access providers) working in the Family Court and specialist domestic violence criminal courts be required to demonstrate a multidisciplinary understanding of domestic violence, including the principles of scientifically rigorous risk assessment, and evidence based practice prior to their appointment, and that they be required to participate in annual "refresher" training on these matters."**

Similarly, Police and professionals working in the Criminal Court, especially in the 8 Family Violence Courts, should also have far better training on domestic abuse and should have to maintain their training at an appropriate level.

There are ample overseas models which New Zealand could draw on to set standards and design training to remedy this huge shortcoming which massively undermines this country's response to domestic violence, child abuse and the protection of women and children. Judges, lawyers, lawyers for children, mediators, counsellors, specialist report writers and others should be required to undergo domestic violence training and to have yearly updates.